

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	No. 04-CR-10319-WGY
v.)	
)	
NOEL HERNANDEZ,)	
)	
Defendant.)	

GOVERNMENT'S RESPONSE TO MOTION TO STRIKE SURPLUSAGE

The United States of America, by its attorneys, United States Attorney Michael J. Sullivan, and Assistant U. S. Attorney William F. Bloomer, hereby replies to the motion to strike surplusage from the indictment, filed by Noel Hernandez.

The government does not oppose striking the final section (entitled "Notice of Additional Factors") from the Superseding Indictment. See United States v. Booker, -- U.S. --, 2005 WL 50108 (Jan. 12, 2005). The defendant was thereby placed on notice of the government's position, at the time the Superseding Indictment was returned, with respect to the application of the United States Sentencing Guidelines to his case under Blakely v. Washington, 542 U.S. __ (2004).

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ William F. Bloomer
WILLIAM F. BLOOMER
Assistant U.S. Attorney

Dated: 31 January 2005